

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CONSTANCE G.,

Claimant,

Vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH Case No. 2011080982

DECISION

This matter came before Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, for hearing on October 3, 2011, in Torrance. Claimant Constance G. was present and represented by her sister, Jennifer G. Harbor Regional Center was represented by Gigi Thompson, Manager of Rights Assurance.

Harbor Regional Center presented Exhibits 1 – 8 and the testimony of Mia Gurri, Program Manager, Adult North Team, and Mary Hernandez, Director of Adult Services. Claimant presented Exhibits A – K and the testimony of claimant and two of her aunts. The parties' exhibits were admitted into evidence under Welfare and Institutions Code section 4712, subdivision (i).

Documentary and oral evidence having been received, the Administrative Law Judge submitted this matter for decision on October 3, 2011, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should attend and/or receive services from the work activity program at Advocacy for Respect and Choice in Long Beach.

FACTUAL FINDINGS

1. Claimant is a twenty-nine year old woman who is eligible for regional center services based on the diagnoses of mild intellectual disability and cerebral palsy. Currently, Harbor Regional Center (Service Agency) is providing claimant with day program services and bus transportation to Lotus House as well as funding through the California Mentor Program so that she can live independently in a home under the Family Home Agency (FHA). Claimant receives Supplemental Security Income and has Medi-Cal benefits or coverage.

2. As set forth in her Individual Family Service Plan (IFSP) and established by testimony presented at the hearing, claimant is an independent and strong-minded young woman who is able to perform most of her activities of daily living. She can cook simple meals for herself and use the bus or Access Services for transportation. She can access the internet on the computer. She enjoys going out into the community for shopping and social activities. Because she chooses not to do so, claimant needs reminders and assistance to take showers and to brush her teeth on a regular basis. Claimant speaks well, can advocate for herself, and likes to make her own decisions. She does not take directions well and does not like other persons telling her what she should do. Claimant does not have any behavioral issues but becomes upset when overwhelmed or frustrated. For example, during the hearing, claimant started to cry when testifying about her lack of spending money.

3. In the last two or three months, claimant has lived in the Long Beach home of a mentor under the California Mentor Program and the FHA program. She first stayed in the mentor's home earlier in the year after breaking up with her boyfriend with whom she previously shared an apartment. The mentor helps claimant with her activities of daily living and gives her support. Claimant enjoys living with the mentor.

4. Currently, claimant attends the adult day program at Lotus House in Signal Hill three days each week from 9:00 a.m. until 4:00 p.m. She takes a bus to the day program. Lotus House provides support and activities for developmentally disabled adults through a clubhouse model. The vendor has clubhouses for jobs and reading and offers classes in cooking, workouts, and healthy eating. Claimant is assigned to work in the administrative unit at Lotus House where she can access an internet social networking page on the computers, assists in giving tours of the facility, and makes posters and birthday cards. However, claimant has chosen not to participate in "unit work" or to set any goals. She prefers to participate in the activities on "Fun Fridays." According to a recent progress report from Lotus House, claimant has a long-term goal to work with children.

5. (A) Earlier this year, claimant asked the Service Agency to change her day program. She wants to attend the Work Activities Program at Advocacy for

Respect and Choice (ARC) in Long Beach. ARC is a non-profit agency that provides center-based services for developmentally disabled adults and children. In addition to the Work Activities Program, ARC offers programs in supported employment, day training activities, special needs, and early intervention. Through its programs, the agency provides vocational and living skills training. ARC also operates two thrift stores. ARC is an authorized vendor of the Service Agency, which currently has approximately 50 consumers receiving services there.

(B) The Work Activities Program at ARC is a sheltered workshop where developmentally disabled adults can learn vocational skills and earn income by performing assembly, packing, packaging, wrapping, sorting, collating, and labeling tasks. ARC has production space and equipment to provide assembly and packaging services and contracts with private companies, including automotive companies, to assemble and package their products at competitive prices. Developmentally disabled adults perform the assembly and packaging tasks. Each consumer works at his or her own pace and can earn approximately \$30 to \$60 every two weeks.

6. On July 25, 2011, the Service Agency denied claimant's request to fund her attendance at the Work Activities Program at ARC and, instead, offered her the opportunity to continue attending the clubhouse activities at Lotus House, participate in the activities at Seaside Learning Center, or start the supported employment program at Path Point. On August 23, 2011, claimant filed a Fair Hearing Request, disagreeing with the Service Agency's decision denying her attendance at ARC.

7. After considering claimant's preference and her needs and abilities, the Service Agency denied claimant's request to attend the Work Activities Program at ARC because it determined that the program is not an appropriate day or employment program for her. As set forth in its decision letter, the Service Agency determined that ARC's Work Activities Program is a segregated or restrictive program in which only developmentally disabled persons participate and do not have access to the community. The Service Agency prefers that its consumers not work in such a sheltered workshop doing assembly tasks and work instead in a more appropriate setting which is integrated and community-based and where they can perform quality work and earn at least minimum wages. For example, the Service Agency has recommended that claimant consider attending Path Point which has not only a work component but also a supported employment program where she can learn job skills.

8. (A) For her part, claimant wants to attend ARC's Work Activities Program because she wants to earn some extra money. She receives approximately \$1,080 each month in Supplemental Security Income but approximately \$960 of that sum is used to pay for her part of the monthly room and board expenses to live at the FHA home of her mentor. After paying her monthly cellular telephone bill, claimant has only about \$75 left each month for her personal expenses. In addition, claimant has friends at ARC and the ARC facility is near her home and her family's home. Claimant used to attend ARC several years ago and has mentioned for the past year

that she wants to return to there. It was not established that claimant has ever held in a job in the community.

(B) Claimant's family believes that she will benefit from the Work Activities Program at ARC by learning job skills and responsibilities, such as following instructions. One of her aunts mentioned that claimant has not been in a work environment for several years now and it would be a good transition for her to work at ARC. Another of claimant's aunts, Debbie Demaree, has worked at ARC for 26 years. Demaree is an instructor in ARC's Day Training Activity Center where she teaches daily living skills to more severely handicapped consumers, takes them on outings, and teaches cooking and physical education classes. Demaree remarked that the Work Activities Program at ARC would be appropriate for claimant because the program is designed for mild and moderately disabled persons like claimant and she can perform a variety of job tasks in assembly and packaging. Claimant also has friends there as well as opportunities for social interaction when there is no work for her. Claimant can take classes in art and cooking and play games. Moreover, claimant may be able to transition to ARC's supported employment program at a later date. Claimant's sister also works at ARC.

9. It was not established that the Service Agency has conducted an assessment of claimant's abilities and handicaps or strengths and weakness to determine whether a supported employment program, such as that at Path Point, is appropriate for her and whether she will be successful in such a program at this time.

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist under the Lanterman Developmental Disabilities Services Act (Lanterman Act) to grant claimant's request to receive service or to attend the Work Activities Program at ARC in Long Beach, based on Findings 1 – 9 above.

2. Under the Lanterman Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.)¹

The Legislature has further declared that regional centers are to provide or secure family supports that, in part, respect and support the decision making authority

¹ All section references are to the Welfare and Institutions Code.

of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (§ 4685, subd. (b).) Services by regional centers must not only be individually tailored to the consumer (§ 4648, subd. (a)(2)) but also provided in the most cost-effective and beneficial manner (§§ 4685, subd. (c)(3), and 4848, subd. (a)(11)).

Further, section 4648, subdivision (a)(8), provides that regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving funds to provide those services. Section 4659, subdivision (a)(1), directs regional centers to identify and pursue all possible sources of funding for consumers receiving regional center services. Effective on September 1, 2008, section 4646.4, subdivision (a), requires regional centers, when purchasing services and supports, to ensure conformance with purchase of service policies and to utilize generic services and supports when appropriate.

3. Discussion—In this fair hearing matter, the Service Agency has reasonably determined that, as a general rule, a community-based supported employment program that offers training and opportunities to consumers so that they can obtain meaningful jobs at fair wages is a more modern and inclusive approach of job development than a sheltered workshop environment that provides only part-time assembly-line work at less than minimum pay. However, the evidence demonstrated that ARC's Work Activities Program would be an appropriate day program for claimant at the present time. First, both claimant and her family want claimant to participate in the ARC program. Claimant is an independent and strong-willed person who knows what she wants and can also get upset when frustrated. She does not want to attend any of the programs recommended by the Service Agency and most likely would not participate or have success at those programs if forced or required to go there. For example at her current day program at Lotus House, claimant has chosen not to take part in unit work or to set a new goal. She will likely achieve and have more success at a day program if she wants to be there and is happy.

Second, the evidence did not demonstrate that claimant is ready for and has the skills to be able to succeed in a supportive employment program or to work at a job in the community. She has not worked or participated in a work setting for several years now. She gets frustrated when upset and does not take regular baths unless prompted and assisted. By attending and working at the Work Activities Program at ARC, she will have to be accustomed to and learn job skills, such as time management, good hygiene habits, following instructions, and completing tasks, that will stand her in good stead in the future. Two family members also work at ARC and, because they know her, claimant should benefit from their support and learn more from the programs at this vendored agency. Family supports should be encouraged.

In the circumstances of this particular matter, the preferences and decision-making authority of claimant and her family as well as consideration of the needs and abilities of claimant as a consumer take precedence and carry more weight than the planning and mission of the Service Agency to try to ensure that consumers receive services in a more inclusive and community-based setting.

Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal or request of claimant Constance G. that the Harbor Regional Center authorize or provide funding for her to attend or receive services at the Work Activities Program at ARC in Long Beach is granted. Forthwith, claimant, her family, and service coordinator or counselor shall confer to ensure that claimant has goals at ARC that she will learn and practice job and life skills that will allow her to transition later to a supported employment program as well as employment in the community. In one year, claimant and Harbor Regional Center shall evaluate the efficacy and appropriateness of claimant's participation in the Work Activities Program at ARC.

Dated: October 13, 2011

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.